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## Equity--Injunctive Relief Where No Property Right Is Violated (Kenyon v. City of Chicopee, 70 N.E.2d 241 (Mass. 1946))

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obvious that were this case to be decided in accordance with the motives of the parties as the layman would determine them, and not by the intent as expressed in the written agreement, the court would be thrust upon the horns of an insurmountable dilemma. The law, as it is administered today, through decisions and statutes, is not primarily concerned with the motivating considerations which bring parties into written contract. It is concerned only with the intent of the parties as expressed in the instrument.<sup>13</sup> To require the courts to inquire into extrinsic motives would throw the law of contract and evidence into confusion.

If the harshness and somewhat arbitrary effect of the common law rule as to the risk of loss problem in the sale of realty is to be minimized, statutory direction should be the instrumentality adopted to achieve such an end. It should be borne in mind, however, that the statutory law is often more extremely opposed to the layman's sense of justice than is the common law.

C. J. B., JR.

**EQUITY — INJUNCTIVE RELIEF WHERE NO PROPERTY RIGHT IS VIOLATED.**—Plaintiffs, members of a religious sect known as Jehovah's Witnesses, seek injunctive relief against repeated arrests and jailings under an unconstitutional city ordinance forbidding the distribution of circulars, handbills and notices of meetings as violative of the sanitary code. Plaintiffs allege deprivation of their rights of freedom of religion, speech, press and assembly, and inadequacy of the remedy at law. The arrests and jailings are continuing notwithstanding the fact that the defendant city officials, police chief and trial judge know of the unconstitutionality of the ordinance. A demurrer by the defendants is predicated upon the absence of any allegation of breach of a property right, and upon the claim that equity will not interpose to prevent prosecution in the criminal courts. *Held*, under special circumstances equity will grant an injunction even in absence of injury to property rights. *Kenyon v. City of Chicopee*, — Mass. —, 70 N. E. (2d) 241 (1946).

It was the rule at common law that equity would protect only property rights,<sup>1</sup> which doctrine has been widely adhered to both in England and in the United States. The modern trend, however, has been to expand equity's jurisdiction to protect all rights recognized in law. Generally speaking, those rights to which equity extends its

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<sup>13</sup> *Gans v. Aetna Life Ins. Co.*, 214 N. Y. 326, 108 N. E. 443 (1915); *Goldstein v. Frances Emblems*, 269 App. Div. 345, 55 N. Y. S. (2d) 740 (1st Dep't 1945).

<sup>1</sup> *Gee v. Pritchard*, 2 Swans. 402, 36 Eng. Rep. 670 (1818).

protection are not limited to specific tangible property, but include, in proper cases, protection of such intangibles as the right to carry on a business,<sup>2</sup> and the right to protect trade secrets.<sup>3</sup> In such cases, the primary requisite for injunctive relief is the inadequacy of the remedy at law. Can it be said that the remedy at law is any more adequate when a personal right is invaded?

Recent decisions in several states,<sup>4</sup> as well as the writings of the late Mr. Justice Brandeis,<sup>5</sup> Dean Pound<sup>6</sup> and Prof. Chaffee<sup>7</sup> emphasize the illogical reasoning in the failure to protect those personal rights recognized in law, when such rights are no less important to the individual and to society than are the property rights which are protected. Equity's extraordinary remedies should be available to all who can bring themselves within three basic requisites: (1) a substantial right will be materially impaired unless the remedy is granted; (2) the remedy at law is inadequate; (3) enforcement of the decree will place no impossible burden upon the court.

The court disposes of defendants' second claim by holding that equity will interpose to restrain prosecution in a criminal court under an unconstitutional ordinance where plaintiff would be subjected to harassment by vexatious litigation affecting those rights which equity protects.<sup>8</sup>

New York courts have not as yet recognized the merits of this reasoning. Injunctive relief will be granted only in the protection of a right of property, even where the result would be to subject the defendant to harassing litigation.<sup>9</sup> The general trend, however, has been to exercise extreme liberality in determining the existence of a right which equity will protect, thereby bringing many which can be called property rights only with difficulty into the line of decisions enabling equity to decree injunctive relief.<sup>10</sup>

P. L. H.

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<sup>2</sup> *Saxon Motor Sales, Inc. v. Torino*, 166 Misc. 863, 2 N. Y. S. (2d) 885 (Sup. Ct. 1938).

<sup>3</sup> *Kaumagraph Co. v. Stampograph Co.*, 235 N. Y. 1, 138 N. E. 485 (1923).

<sup>4</sup> *Stark v. Hamilton*, 149 Ga. 227, 99 S. E. 861 (1919); *accord, Ex parte Warfield*, 40 Tex. Crim. Rep. 413, 50 S. W. 933 (1899); *see Vanderbilt v. Mitchell*, 72 N. J. Eq. 910, 919, 67 Atl. 97, 100 (1907).

<sup>5</sup> Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

<sup>6</sup> Pound, *Equitable Relief Against Defamation and Injuries to Personality*, 29 HARV. L. REV. 640 (1916).

<sup>7</sup> Chaffee, *The Progress of the Law, 1919-1920*, 34 HARV. L. REV. 388, 407 (1921).

<sup>8</sup> *Shuman v. Gilbert*, 229 Mass. 225, 118 N. E. 254 (1918).

<sup>9</sup> *Biddles, Inc. v. Enright*, 239 N. Y. 354, 146 N. E. 625 (1925).

<sup>10</sup> WALSH, A TREATISE ON EQUITY § 50 (1930).